# Members Only

AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF

**Volume 128 Issue 13**
**March 23, 2010**

# Ohio's Agricultural Commodity Marketing Programs*

PREPARED BY: JEFF GRIM, LSC RESEARCH ASSOCIATE
REVIEWED BY: MARCIA A. COOPER, LSC DIVISION CHIEF

*Ohio law allows producers of agricultural commodities to petition the Ohio Department of Agriculture for the creation of marketing programs to promote the sale and use of their products. A separate grain marketing program was established by statute in 2007.*

Ohio law provides a mechanism by which producers of certain agricultural commodities may establish programs to promote the sale and use of their products, develop new uses and markets for their products, improve the methods of distributing their products to consumers, and standardize the quality of their products for specific uses. These agricultural commodity marketing programs are established through the Ohio Department of Agriculture and are funded through assessments on the agricultural commodities. Additionally, in 2007, the General Assembly enacted legislation establishing by statute a separate grain marketing program.

Currently, the Department regulates six marketing programs established under the Agricultural Commodity Marketing Programs Law. The programs and the years in which they were established are the Ohio Apple Marketing Program (1970), Ohio Beef Council (1970), Ohio Corn Marketing Program (1989), Ohio Egg Marketing Program (1973), Ohio Sheep and Wool Marketing Program (1989), and Ohio Vegetable and Small Fruit Program (1993). The Department also is required to administer the Ohio Small Grains Marketing Program created by statute in 2007.

This brief discusses the laws governing those programs. Three additional programs in Ohio are regulated by the U.S. Department of Agriculture. Under these programs, producers still contribute a specified amount of their sales to a marketing program. The federally regulated programs and their years of establishment are the American Dairy Association and Dairy Council Mid-East (1984), Ohio Pork Producers Council (1986), and Ohio Soybean Association (1990).

* This *Members Only* brief is an update of an earlier brief on this subject dated April 16, 2003 (Volume 125 Issue 1).

## Programs established by producers

### *Formation*

For purposes of marketing programs that are established by producers of agricultural commodities, "agricultural commodity" means any food, fiber, feed, animal, or plant or group of foods, fibers, feeds, animals, or plants that the Director of Agriculture determines to be of the same nature, in either a natural or processed state. "Agricultural commodity" does not include wheat, barley, rye, or oats, for which the statutory grain marketing program was established (see below).[1]

*Producers of an agricultural commodity may petition the Director of Agriculture to hold a referendum on the creation of a marketing program.*

If the producers of an agricultural commodity want to create a marketing program, they present to the Director a petition, signed by the lesser of 1,000 or 20% of all producers of that commodity, requesting that the Director hold a referendum establishing such a program. The proposed program must include requirements for appointing or electing an operating committee to manage the program and specified criteria and procedures governing assessment of the agricultural commodity.[2] As part of the Director's consideration of a proposed program, the Director may require each handler, distributor, or processor of the agricultural commodity to file with the Director a certified report that includes the name and address of each producer of the agricultural commodity from whom the handler, distributor, or processor received the commodity during the immediately preceding marketing season and the volume marketed by that producer during that season. Ohio law prohibits the Director from making public, or making available to anyone for private use, the information contained in the reports.[3]

Before making a decision, the Director must publish, in at least two appropriate periodicals, notice of the proposed program and of the procedures for submitting comments. The Director then must provide copies of the proposed program to interested parties and allow a 30-day comment period. Based on any comments from interested persons, the petitioners may make changes to the proposal. In addition, the Director may make technical changes to the proposal to ensure compliance with the Agricultural Commodity Marketing Programs Law. After any changes, the Director may approve or disapprove the proposed program.[4]

If the Director approves the proposed program, the Director must hold a referendum within 90 days to determine whether the producers favor it. The producers favor the proposed program if a majority of those voting in the referendum vote for it.[5] If the producers vote against forming a marketing program, the Director cannot hold an additional referendum on that proposed program for ten months following the close of the referendum. Votes may be cast in person or by mailing a ballot to a polling place designated by the Director.[6] When the producers of an agricultural commodity vote to establish a marketing program, the Director must order the program established.[7]

Once established, a marketing program may be amended. The process is generally the same as for the establishment of a program, including the holding of a referendum. If the program was established on or after April 10, 1985, an amendment is approved if a majority of the producers voting in the referendum vote in favor of it.[8] However, if the program was established before that date, an amendment is approved if either of the following occurs: (1) two-thirds or more of the producers voting in the referendum vote for the proposed amendment and represent a majority of the volume of the commodity that was produced in the preceding marketing year by all producers who voted in the referendum, or (2) a majority of the producers voting in the referendum vote for the proposed amendment and represent two-thirds or more of the volume of the commodity that was produced in the preceding marketing year by all the producers who voted in the referendum.[9]

***Operation***

After a marketing program is formed, an operating committee must be elected by the producers or appointed by the Director, as specified in the program proposal, to administer the program. If the operating committee is to be elected, the program as approved by the Director must include nomination and election procedures. If the operating committee is to be appointed, the Director must appoint members from a list of candidates recommended by the producers of the commodity. If possible, the appointed members must be equitably distributed by geographic and production areas. The Director cannot appoint any member to serve more than three successive full three-year terms. Whether elected or appointed, an operating committee must consist of between three and 15 producers.[10]

The Director, or the Director's designee, is an ex officio member of each operating committee with the right to vote. Each member, except the Director or the Director's designee, is entitled to specified expenses while attending committee meetings or while engaged in the performance of official committee responsibilities. A person is not civilly liable for any actions taken in good faith as a member of an operating committee.[11] The Director must monitor the actions of each operating committee to ensure that each marketing program is self-supporting and is operated in accordance with state law.[12]

The Agricultural Commodity Marketing Programs Law contains other provisions governing marketing programs that are established by producers. For example, a marketing program may include the authority to

*After a marketing program is formed, an operating committee must be elected by the producers or appointed by the Director of Agriculture to administer the program as specified in the program proposal.*

An operating committee may levy an assessment on its agricultural commodity in order to fund its activities. The assessment must be approved by the producers.

contribute to a national or regional marketing program if the national or regional program is exclusively for the promotion, research, marketing, and sale of the commodity.[13] Also, the Director may appoint a coordinating committee consisting of one representative from each operating committee to coordinate the efforts of all marketing programs.[14] Finally, the Director has authority to enforce compliance with the law, rules adopted under it, and any marketing program established in accordance with it.[15]

***Assessments on agricultural commodities***

An operating committee may levy an assessment on its agricultural commodity in order to fund its activities. However, an operating committee cannot levy an assessment that: (1) was not approved by the producers, (2) exceeds 2¢ per bushel of corn or soybeans or 2% of the average market price of any other agricultural commodity during the preceding market year as defined by the U.S. Department of Agriculture or, if there is no federal definition, by the Director, or (3) is against any producer who is not eligible to vote in a referendum for the marketing program. The Director may require a producer, processor, distributor, or handler of an agricultural commodity for which a marketing program has been established to withhold assessments from any amounts that the producer, processor, distributor, or handler owes to producers of the commodity and, except for producers who are not eligible to vote in a referendum, to remit them to the Director. Any processor, distributor, or handler who pays an assessment for a producer may deduct the amount from any money that the processor, distributor, or handler owes to the producer.[16]

Ohio law prohibits a person from knowingly failing or refusing to withhold or remit an assessment.[17] Violation is a fourth degree misdemeanor.[18] Before instituting any criminal proceedings, the Director must give the alleged violator an opportunity to explain why they should not be instituted.[19] Ohio law also prohibits an operating committee from using assessments for any political or legislative purpose or for preferential treatment of one person to the detriment of another person affected by the marketing program.[20]

An operating committee must refund to a producer the assessments that it collects from that producer within 60 days after receiving a valid application for a refund. A refund can be made only to a producer who complies with the program's procedures for a refund. In the case of the state beef marketing program, rather than giving a refund to a producer, the director of the program's operating committee may forward the refund to the Cattlemen's Beef Promotion and Research Board pursuant to federal law and must credit that amount to the total amount owed by the producer to the federal beef program.[21]

Each marketing program has a fund in the state treasury. Generally, all money collected by the Department of Agriculture from each marketing program must be paid into that program's fund, and can be disbursed only in accordance with a voucher approved by the Director for use in defraying the costs of administering the program and carrying out the program's activities. However, instead of depositing money in the fund, an operating committee may deposit all money collected with a bank or savings and loan association. Money so deposited can be used only in the same manner as money that is paid into a program's state fund.[22]

An operating committee must establish a fiscal year for its marketing program, publish an activity and financial report at the end of each fiscal year, and make the report available to each producer who participates in the program and to other interested persons. In addition, an operating committee that deposits money into a bank or savings and loan association must submit to the Director an unaudited financial statement each month and a financial statement at the end of each fiscal year that is prepared by a certified public accountant.[23]

### *Continuation*

The Director may temporarily suspend a marketing program, or any part of a program, for any reason upon the recommendation of the program's operating committee. A suspension may last for no more than 12 consecutive months. At least once in every five years of operation, or whenever the lesser of 20% or 1,000 of the affected producers sign a petition, the Director must hold a hearing, after giving public notice, to consider the continuation of a program. Within 30 days after the close of the hearing, the Director must recommend continuation or termination of the program and give public notice of the recommendation on the Internet by publication in the *Register of Ohio*. The Director also must provide notice of the recommendation to any person who, in writing, has requested notification and may give whatever other notice the Director reasonably considers necessary to ensure that notice is given to all persons who are affected by the program.[24]

When recommending termination of a program, the Director must, within 45 days, determine by a referendum whether the producers favor the proposed termination. The producers favor termination if a majority voting in the referendum vote to terminate it.[25] If the vote is in favor of terminating a program, the operating committee and the Director must terminate all of the program's operations. Upon a program's termination, the Director may spend any remaining unobligated funds for any lawful purpose of the Department of Agriculture.[26]

*At least once every five years, or whenever a specified number of producers sign a petition, the Director of Agriculture must hold a hearing to consider the continuation of a marketing program.*

## Grain marketing program established by statute

### *Election of operating committee*

*The Director must hold an election to determine the membership of a grain marketing program operating committee.*

For purposes of the grain marketing program, "grain" means wheat, barley, rye, or oats.[27] The Director of Agriculture must hold an election to determine the membership of a grain marketing program operating committee in accordance with rules adopted by the Director. The election must be for nine members. In accepting nominations and placing names on the ballot, the Director must follow the procedures established in those rules.[28]

Producers may cast votes in person or by mail. The Director must establish a three-day period during which producers may vote in person during normal business hours at designated polling places. The Director or another appropriate person must send a ballot by ordinary first-class mail to a producer who requests one. A ballot returned by mail is not valid if it is postmarked later than the third day of the election period established by the Director.[29]

The Director must cause a ballot request form to be published at least 30 days before the beginning of the election period in at least two appropriate periodicals designated by the Director, and must make the form available for reproduction to any interested group or association. The Director also must provide a toll-free telephone number that producers may call to request a ballot.[30]

Following the election of the initial members, the Director must hold subsequent elections in order to maintain the membership of the operating committee as provided in the Director's rules. The elections must be held in the same manner as the election of initial members. Persons elected to the operating committee must hold office in accordance with the Director's rules.[31]

### *Roles of operating committee and Director*

The operating committee must hold at least one meeting per quarter every year. The members of the operating committee must select officers annually. The statutes governing the Director's membership on the grain marketing program operating committee and the travel and incidental expenses of the committee members are similar to those governing the other commodity marketing programs. As is the case with the other marketing programs, a member of the grain marketing program operating committee is not civilly liable for any actions taken in good faith as a member of the committee. But the statutes governing the grain marketing program also include employees of the operating committee in that civil liability protection.[32]

Among its duties, the operating committee must establish requirements and procedures for the collection of assessments that it is required to levy (see below), including the method and frequency of collection and procedures to file for a refund.[33] In addition, the operating committee may perform other functions, such as receiving and investigating, or causing to be investigated, complaints concerning and violations of the grain marketing program. It must refer any violations to the Director.[34]

As with the other agricultural commodity marketing programs, the Director must monitor the activities of the grain marketing program operating committee to ensure that the program is self-supporting and is operated in accordance with Ohio law. Additionally, the Director must adopt rules in accordance with the Administrative Procedure Act that are necessary to carry out the purposes of the program, including rules governing the terms of and conditions for membership on the operating committee.[35] Those rules took effect June 28, 2008.[36]

### *Assessments on grain*

The statutes governing the levying and collection of assessments under the grain marketing program are substantially similar to those governing assessments under the other agricultural commodity marketing programs, with the following exceptions. First, the grain marketing program operating committee must levy on producers, and handlers under certain conditions, an assessment of one-half of 1% of the per-bushel price of wheat, barley, rye, and oats, as applicable, at the first point of sale.[37] Second, the Director may require a handler to withhold assessments from any amounts that the handler owes to producers and to remit them to the Director.[38] Third, the operating committee must refund to a producer the assessments it collects from the producer not later than 30 days after receipt of a valid application for a refund, provided that the producer complies with the operating committee's procedures.[39]

Similarly, the requirements governing the deposit of assessments and the filing of financial reports under the grain marketing program are generally the same as the requirements governing the other agricultural commodity marketing programs, with one exception. The grain marketing program operating committee must deposit all assessments only with a bank or savings and loan association.[40]

### *Other provisions*

Enforcement of the grain marketing program is similar to the enforcement of the other agricultural commodity marketing programs. The grain marketing program may be suspended or terminated in the same manner in which other marketing programs are suspended or terminated.[41]

*As with other agricultural commodity marketing programs, the Director must monitor the activities of the grain marketing program operating committee to ensure that the program is self-supporting and is operated in accordance with Ohio law.*

*The statutes governing the levying and collection of assessments under the grain marketing program are substantially similar to those governing the other agricultural commodity marketing programs with a few exceptions.*

## Endnotes

[1] R.C. 924.01(A).
[2] R.C. 924.04(B).
[3] R.C. 924.05.
[4] R.C. 924.04(C) and (D).
[5] R.C. 924.06(B).
[6] R.C. 924.06(C) and (E).
[7] R.C. 924.07(A).
[8] R.C. 924.04 and 924.06.
[9] R.C. 924.06(A).
[10] R.C. 924.03(B) and 924.07(A), (B), (C), and (D).
[11] R.C. 924.07(E), (F), and (G).
[12] R.C. 924.08.
[13] R.C. 924.03(A).
[14] R.C. 924.14. A coordinating committee currently does not exist.
[15] R.C. 924.15.
[16] R.C. 924.09(A), (B), and (C).
[17] R.C. 924.16(A).
[18] R.C. 924.99.
[19] R.C. 924.16(B).
[20] R.C. 924.09(D).
[21] R.C. 924.09(E).
[22] R.C. 924.10(A) and (B).
[23] R.C. 924.10(C) and (D).
[24] R.C. 924.12(A), (B), and (C).
[25] R.C. 924.12(D).
[26] R.C. 924.13.
[27] R.C. 924.20(A).
[28] R.C. 924.22(A).
[29] R.C. 924.22(B) and (C).
[30] R.C. 924.22(D).
[31] R.C. 924.22(E) and (F).
[32] R.C. 924.23.
[33] R.C. 924.24(A).
[34] R.C. 924.24(B).
[35] R.C. 924.25.
[36] Ohio Administrative Code 901:4-7-01 to 4-7-09.
[37] R.C. 924.26(A).
[38] R.C. 924.26(B).
[39] R.C. 924.26(D).
[40] R.C. 924.26(C) and 924.27.
[41] R.C. 924.28, 924.29, 924.30, and 924.99.

**PUBLISHED BY THE OHIO LEGISLATIVE SERVICE COMMISSION STAFF**

9th Floor
Vern Riffe Center
Columbus, Ohio
614/466-3615

Director
Mark Flanders

Deputy Director
Jim Kelly

Contributing Author
Jeff Grim,
LSC Research Associate

Reviewer
Marcia A. Cooper,
LSC Division Chief

Layout & Design
Jeanette Cupp